IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

No. ~~503~~ 34

HOWELL CHEVROLET COMPANY, a Corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

FREDERICK A. POTRUCH,
FINDLAY A. CARTER,
ERWIN LEMEN,
520 Story Building,
610 South Broadway,
Los Angeles 14, California,
Counsel for Petitioner.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Howell Chevrolet Company, Petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on February 26, 1953.

Opinions Below.

The order of the National Labor Relations Board [R. 54] was issued on July 23, 1951, and is not reported. The opinion of the Court of Appeals [R. 334] has not been reported as of this date.

Jurisdiction.

The judgment of the Court of Appeals was entered on February 26, 1953 [R. 352]. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1251(1).

Questions Presented.

Whether the National Labor Relations Act, as amended is applicable to franchised retail automobile dealers who purchase and sell all of their merchandise within the boundaries of one state, where the motor cars and trucks sold by the automobile dealers are assembled within the same state.

Statute Involved.

The pertinent statutory provisions are printed in Appendix A, *infra*.

Statement.

Upon charges filed by the International Association of Machinists, a labor organization, the National Labor Relations board, after the usual proceedings, issued its decision and order in which it found that Petitioner had violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended. The National Labor Relations Board found, with respect to Petitioner's business, that Petitioner is engaged in the sale and distribution at Glendale, California, of new Chevrolet motor vehicles, parts and accessories, under a dealer's agreement with Chevrolet Motor Division, General Motors Corporation. This agreement provides for certain controls as to the Petitioner's capital requirements, place of business, hours, servicing facilities, personnel, signs, and local area advertising. The Petitioner is one of a limited number of dealers selling Chevrolet products. [R. 55-56.] All the Petitioner's sales and purchases are made within the State of California. During the year 1949, the Petitioner purchased from the Chevrolet Motor Division, General Motors

Corporation, new Chevrolet automobiles and trucks and parts and accessories with a value in excess of one million dollars. The new cars and trucks purchased and sold by Petitioner are assembled at the Van Nuys, California plant of Chevrolet Division, General Motors Corporation. Approximately 43 percent of the parts used to manufacture new cars and trucks at the Van Nuys, California plant are shipped from points located outside the State of California. [R. 16-17.]

Upon the basis of these facts the National Labor Relations Board rejected Petitioner's contention that it was not subject to the jurisdiction of the Board, chiefly upon the ground that Petitioner is an integral part of the national system of distribution of the Chevrolet Motor Division, General Motors Corporation. [R. 56.]

The Court below granted a decree of enforcement of the order of the National Labor Relations Board. [R. 352.] The Court held that Petitioner was subject to the jurisdiction of the National Labor Relations Board because it was of the opinion that it could not disturb the Board's finding that Petitioner is an integral part of the national system of distribution of the Chevrolet Motor Division, General Motors Corporation under the authority of *N. L. R. B. v. Hearst Publications, Inc.*, 322 U. S. 111 and because it felt bound by its decision in *N. L. R. B. v. Townsend*, 185 F. 2d 378, *cert. den.*, 341 U. S. 909. Judge Stephens wrote a concurring opinion, in which Judge Harrison joined, in which he inferred that he personally was of the opinion that Petitioner was not subject to the jurisdiction of the National Labor Relations Board but that the Board's order must be enforced under the authority of the *Hearst* and *Townsend* cases, *supra*.

Specification of Error to Be Urged.

The Court erred in holding that the National Labor Relations Act, as amended is applicable to franchised retail automobile dealers who purchase and sell all their merchandise within the boundaries of one state, where the motor cars and trucks sold by the automobile dealers are assembled within the same state.

Reasons for Granting Writ.

1. The decision of the Court below in the instant case is directly in conflict with the decision of the Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Bill Daniels, Inc.*, ... F. 2d ..... (decided January 20, 1953), where it was held, on substantially the same facts as in the instant case, that a franchised retail automobile dealer is not subject to the jurisdiction of the National Labor Relations Board. This conflict was conceded in the Court below. [R. 336-337.]

2. Clearly, the question presented is of importance in the administration of the National Labor Relations Act, as amended. Settlement of the question by this Court is plainly in the public interest, since it will not only determine whether approximately 40,000 franchised retail automobile dealers are subject to the provisions of the National Labor Relations Act, as amended, but also it will determine whether many other thousands of franchised retail merchants, *e. g.*, retailers of appliances, are subject to the provisions of that Act.

3. The decision of the Court below is believed to be erroneous and the conflicting decision of the Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Bill Daniels, Inc., supra*, correct. Moreover, the decision below probably conflicts with applicable decisions of this Court.

In *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, Mr. Chief Justice Hughes stated at page 31:

> "The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds."

Mr. Chief Justice Hughes continued at page 37:

> "Undoubtedly the scope of this power (of Congress over intrastate activities) must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

However, if construed in accordance with the opinion of the Court below in this case the constitutional term "interstate commerce" will lose its meaning and the boundary between State and Nation will be obliterated. As stated by Judge Stephens in his concurring opinion in this case in the Court below:

> "I remain unconvinced . . . that a simple business transaction within a State is interstate commerce because of a fine-spun tracing of a remotely possible and immeasurable relation to trade across a state line . . ." [R. 351.]

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FREDERICK A POTRUCH,
FINDLAY A. CARTER,
ERWIN LERTEN,
Counsel for Petitioner.

April 6, 1953.

APPENDIX.

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. 141, Supp. IV, Secs. 151 *et seq.*) are as follows:

"DEFINITIONS.

"Sec. 2. When used in this Act—

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foriegn country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory or between points in the same State but through any other State or any Territory or the District of Columbia, or any foriegn country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Service of the within and receipt of a copy thereof is hereby admitted this_____day of April, A. D. 1953.

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